APPEAL NO. 031462
FILED JULY 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 14, 2003. The hearing officer noted that "the true subsumed issue is: does [appellant (claimant)] have radiculopathy shown by the objective evidence so that DRE [Diagnosis Related Estimate] category III applies under the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides)." Neither party has objected to that characterization of the issue. The hearing officer determined that the claimant reached maximum medical improvement (MMI) on April 24, 2002, and that the claimant's impairment rating (IR) is 10%,[1] as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor, which was not against the great weight of medical evidence. The claimant appeals, asserting that the designated doctor failed to rate the claimant's compensable cervical injury, and that the treating doctor's 23% IR should be adopted, or, in the alternative, that a new designated doctor should be appointed to determine the correct IR. The respondent (self-insured) replies, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. The self-insured accepted a right shoulder injury initially, and the Commission later determined that the compensable injury extended to and included the claimant's C5-6 herniated disc and a C6-7 disc bulge. That decision became final under Section 410.169 when the self-insured submitted an untimely appeal. Texas Workers' Compensation Commission Appeal No. 021954, decided August 15, 2002.

The designated doctor wrote in his Report of Medical Evaluation (TWCC-69) that the diagnosis for the claimant was: Cervical strain. Injury right shoulder. He assigned a 10% IR to the loss of range of motion in the claimant's shoulder. He attempted to evaluate the cervical range of motion, but found it was not valid. He specifically found "no evidence of motor weakness, reflex change, sensory deficit or any other problem that would indicate that she has a cervical spine injury." This comment precipitated a request for clarification that the designated doctor responded to within a short time. The request for clarification advised the designated doctor that the "Commission has determined that the compensable injury does extend to and include a C5-6 herniated disc and a C6-7 disc bulge, not just a cervical sprain," and went on to ask if this changed his opinion on MMI/IR. The treating doctor's TWCC-69, an MRI dated May 22,

[1] The 10% IR is based entirely on the shoulder impairment.

2001, and an EMG dated September 2001[2], were sent with the request for clarification. The designated doctor responded:

> If one reviews the cervical spine MRI, dated May 22, 2001, there is simply a bulge at C6-7 disc and some sclerosis in the upper aspects of the body of C7. What is called a disc herniation C5-6 is an anterior disc herniation, away from the nerve roots into the retropharangeal area, not into the spinal cord or nerve root area.
>
> The EMG studies that you mentioned are certainly not convincing of a cervical spine injury or cervical radiculopathy, and certainly by the clinical examination I performed on this individual on April 24, 2002, do not indicate any evidence of a cervical radiculopathy.
>
> Therefore, my opinion is not changed as to my original evaluation of this individual.

Fairly read, the designated doctor found 0% IR for the cervical region under DRE category I of the AMA Guides.

For a claim for workers' compensation benefits based on a compensable injury that occurred before June 17, 2001, Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The parties stipulated that the designated doctor was appointed by the Commission and that the designated doctor certified that the claimant reached MMI on April 24, 2002, with a 10% IR. The hearing officer found that the presumptive weight accorded to the designated doctor's opinion had not been overcome by the great weight of contrary medical evidence, and that the treating doctor's certification of MMI and IR represents a mere difference of opinion. The hearing officer found that the designated doctor's opinion was based upon a review of the complete medical records and a clinical examination in which the designated doctor determined that there was no true evidence of radiculopathy which warranted a rating for the cervical spine other than the 0% rating for DRE category I of the AMA Guides.

The hearing officer thoroughly reviewed and set forth the arguments and contentions of the parties in the Statement of the Evidence. The arguments made on appeal are essentially the same as those advanced at the CCH. Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the great

[2] The EMG is identified as "dated 9/99" in the letter from the claimant's attorney to the benefit review officer (BRO) and in the BRO's letter to the designated doctor. There is only one EMG report in the record. It is dated September 5, 2001, not before the date of injury, as an EMG "dated 9/99" would be.

weight of the medical evidence is not contrary to the report of the designated doctor and that the claimant reached MMI on April 24, 2002, with a 10% IR are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge